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by the umpire theory, however, the result reached in *Nulton v. Croskey* would seem proper. Where the court has contributed to the unlawful and unjust result under a mistaken view of the law, it is not only its right but its duty to itself, to order a new trial. *Wolmerstadt v. Jacobs* (1883) 61 Iowa 372. A fair umpire may not champion either side, therefore if he has prejudiced the rights of either side by active error on his part, he should be permitted to rectify such mistake. The exercise of this power is not a matter of right which a party may demand, but rests in the court's discretion. *Richmond v. Pogue* (1865) 36 Mo. 313. A logical extension of this principle might justify the court's acting upon its own initiative in cases where a part of the court, for instance the jury, has been guilty of error to the detriment of one of the parties, as by rendering a verdict in direct violation of proper instructions, or one clearly insufficient, or one not responsive to the issues. *Allen v. Wheeler* (1880) 54 Iowa 628; *R. R. v. Cir. Judge* (1896) 110 Mich. 173.

THE RIGHT OF A CONVICT TO CONTRACT.—A distinction was early made between the rights of one under attainder of treason or felony and one civilly dead. A person attainted was at times spoken of as "civiliter mortuus," *Bullock v. Dodds* (1819) 2 B. & Al. 258, but the results of such attainr were not the same as the results of civil death. The latter term was synonymous to natural death and was strictly confined to cases of persons banished, or abjured the realm, or who had entered the church. *Platner v. Sherwood* (N. Y. 1822) 6 Johns. Ch. 118. Certain proprietary rights were preserved to a man attainted. He did not forfeit his freehold so long as he lived until office found or entry by the king. *Doe v. Prichard* (1833) 5 B. & A. 765; cf. *Avery v. Everett* (1888) 110 N. Y. 317. Until this entry was made, a grant by one under attainder bound all persons, but the king and the lord, of whom the lands were held. *Sheppards Touchstone* 231; *Perkins Profitable Book* 62. Likewise where the forfeiture of the estate was limited to the lifetime of the one attainted, the remainder of the estate could be devised by the felon. *Rankin's Heirs v. Executors* (Ky. 1828) 6 T. B. Mon. 531.

It seems perfectly clear that the rights to personal safety of the one attainted were inviolate. He was not absolutely at the disposal of the crown, for until execution, the creditors had an interest in his person for securing their debts and after pardon granted, he could bring an action for personal injuries received during imprisonment. See *Ramsay v. MacDonald* (1748) Foster's Crown Cases 62, note. Whether his contract rights were preserved is not so clear. It is intimated that an attainted person could make a valid contract of marriage, although perhaps unable to enforce contracts at the time. *Kynnaird v. Leslie* (1866) L. R. 1 C. P. 389. This question has recently been passed upon by the federal district court in Massachusetts as one of novel impression. A convict who had escaped was allowed to recover, after his subsequent recapture and service of sentence, upon his contract made during the period of his escape. *McCarron v. Dominion Atlantic Ry. Co.* (1905) 134 Fed. 762.

In the eyes of the law, a convict's disqualifications attach the moment sentence is passed and continue wherever he may go by authority or by his own escape. *Miller v. Finkle* (N. Y. 1853) 1 Park. Crim. Rep. 374; *Ruffin's Case* (1871) 21 Grat. 790. No distinction can, therefore, be drawn between the contractual rights of an escaped convict and one who is still incarcerated. In the light of the decision in the principal case, a convict's position to-day would seem to be analogous to that of one under attainder rather than one civilly dead. In the absence of a statute expressly making his contracts void, cf. 33 & 34 Vict., c. 23, his right to contract would seem to survive, although his remedy is temporarily suspended, and upon the ceasing of the disability, the remedy is itself restored.